

Insider Dealing & Market Manipulation proposals: delayed disclosure for issuers

Message To Rapporteurs and Shadow Rapporteurs in the European Parliament:

EuropeanIssuers, representing quoted companies all over Europe, would like to draw your attention to some confusion on article 12 § 4 and § 5 of the ECON MAR–compromise–amendments in ECON which to our knowledge will be **voted on Tuesday next week**. According to our understanding, the wording of these compromise amendments contains a editorial mistake which could, however, lead to enormous compliance problems within listed companies. In fact § 4 and § 5 refer to 2 different situations but have been mixed up and create an inconsistent provision.

Issuer responsibility

Article 12 § 4 (and recital 24) reflects a situation in which the issuer "may under **his own responsibility** delay the public disclosure of inside information such **as not to prejudice his legitimate interest** ..." provided that 2 conditions are met: i) the omission is not misleading for the public, ii) the confidentiality can be ensured.

According to the Commission proposal (and the directive in force) the issuer shall inform the competent authority after the delay. This is the regime of the existing MAD which works very smoothly and is well-understood by both issuers and investors. **Thus, we do not see a need for change with respect to this point, nor have we identified any voices calling for changes.**

Financial stability

Article 12 § 5 has been inserted in the proposal for a complete different purpose. As recalled in recital 25 (compromise amendment version 4/10/12) "At times [..] , it may be in the **best interest of financial stability** for the disclosure of inside information to be delayed when the information is of systemic importance. It should therefore be possible for the competent authority **to decide** a delay in the disclosure of inside information.

In article 12 of the ECON compromise amendment **these 2 entirely different situations have been mixed up**. Therefore, the issuer may *under his own responsibility* delay the public disclosure [..] such **as not prejudice his legitimate interest** provided that: i) the delay is **not misleading for the public**; ii) **confidentiality** can be ensured. **Moreover**, the issuer has to inform the competent authority of its **intention to delay** and prove that this information is **iii) of systemic importance**, iv) in the **public interest** and v) (again) confidentiality can be ensured.

Problems created

Taken literally, this would lead to two problems:

1) The issuer will not be able any more to delay the disclosure of inside information under his own responsibility, which would create serious problems, in particular in processes that occur in stages and where the obligation to disclose and the conditions for a possible delay have to be checked permanently. This would also introduce a break to the existing MAD regime, which has in this point worked smoothly (see above).

2) A delay would only be possible in the situation that the information in question is of systemic importance. It should be laid down clearly that conditions iii) and iv) (Art. 12.5) have nothing to do with the legitimate interest of the issuer: one situation is to delay in order not to prejudice the issuer's legitimate interest, another situation is to delay to preserve financial stability.

Proposed solution

From our point of view, it is therefore the best possible solution at this stage of negotiations to stick to the original EU Commission's proposal which defines the rules of a delay under own responsibility laid down below, before unintentionally altering the existing essence and long-term understanding of the disclosure regime of inside information both with respect to accepted reasons for delaying and the way a delay is decided.

4. "Where an issuer of a financial instrument or emission allowance market participant has delayed the disclosure of inside information under this paragraph it shall inform the competent authority that disclosure of the information was delayed immediately after the information is disclosed to the public."

For more information, please do not hesitate to contact Susannah Haan, Secretary General of EuropeanIssuers at Susannah.Haan@europeanissuers.eu.

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We aim to ensure that EU policy creates an environment in which companies can raise capital through the public markets and can deliver growth over the longer-term. We seek capital markets that serve the interests of their end users, including issuers.

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